



October 7, 2008

## **2008 Random Lobbyist Audit Highlights**

As a result of conducting the 2008 random audits, Commission staff wish to share with the regulated community and the public certain information that may be helpful to lobbyists in their future efforts to comply with the Ethics Reform Act of 2006. The audit process presented an opportunity to have one on one contact with members of the regulated community. Staff took advantage of the opportunity to try to accomplish the following objectives in addition to the ones required by the audit itself:

1. To obtain feedback and suggestions from lobbyists regarding the efficiency and convenience of the Commission's procedures and to implement or recommend changes accordingly.
2. To find out what areas of the law or the procedures might be unclear or confusing to lobbyists, to research those areas as necessary, and to attempt to clarify those areas.

Not every suggestion could be acted on, and not every area of confusion could be clarified. Nonetheless, there was considerable progress as set forth below. While nothing in this document can be construed as an advisory opinion or other official legal pronouncement of the Commission, it is the hope of Commission staff that it will prove useful to the regulated community and the public.<sup>1</sup>

### **1. Changes in procedure:**

#### **Questionnaire**

Feedback indicated that the new procedure of requesting the audit materials through a questionnaire distributed prior to the initial audit interview is an improvement. All but a very few lobbyists responded promptly to the request and submitted all necessary materials prior to the audit. Of those few who did not submit in advance, all but one submitted the necessary materials shortly after the initial audit interview.

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<sup>1</sup> Any changes in procedure suggested by staff are subject to approval or modification by the Commission. Any person subject to the Commission's jurisdiction who would like to have a legal response to a legal question should either request a legal staff member for an informal response or send a written request to the Executive Director for an advisory opinion from the Commission.

Having the necessary audit materials prior to the audit allowed staff to more thoroughly prepare for the audit in advance. This ability meant the staff could narrow the subjects of inquiry to relevant and necessary areas and thus avoid asking redundant questions and wasting the lobbyist's time.

### **Required Photograph**

The Act requires lobbyists to provide a current photograph to the Commission along with their other registration materials.<sup>2</sup> Lobbyists also have their photographs taken for the State of Tennessee Lobbyist Identification Badge. As a result of a lobbyist's suggestion during an audit interview, Commission staff arranged that the photographer who takes the identification badge photograph will, upon request from the lobbyist, forward a digital copy of that photograph to the Commission at [ethics.pics@state.tn.us](mailto:ethics.pics@state.tn.us). This photograph can then be posted on the Commission's website in compliance with the registration photograph requirement.

### **Third party confirmation.**

It is standard practice for auditors to obtain third party confirmation of certain information received from a person or entity being audited. In the lobbyist context, confirmation would be helpful in confirming the accuracy of reported lobbyist compensation when a lobbyist who is being audited works for several employers, or when an employer employs multiple lobbyists. By confirming the lobbyist's compensation with the employer, the Commission would be able to make a more accurate determination. The confirmation information, like other "random audit information" as defined in the statute, would be confidential. Commission staff anticipate that third party confirmation may be used as part of the 2009 random audit process.

## **2. Clarifications:**

### **When Lobbyists Must Register**

Some lobbyists believed they were required to register seven (7) days after their employer submitted its registration. Others believed they were required to register within seven (7) days of actually engaging in lobbying for their employer. The Act requires that lobbyists and employers must register "within seven (7) days after entering into an agreement or arrangement with an employer to provide lobbying services."<sup>3</sup>

In-house lobbyists have a continuing agreement to lobby for their employer. Thus, legally, they enter into such an arrangement on the first day of each registration period. Since the registration period is now on the calendar year, all in-house lobbyists who continue to be employed from the last day of the previous year must register within seven (7) days of January 1.

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<sup>2</sup> Tenn. Code Ann. § 3-6-302(a)(3).

<sup>3</sup> Advisory Opinion 06-01.

### **Allocation of Income attributable to Lobbying activities**

Several lobbyists audited have job descriptions which entail more than lobbying and lobbying related activities. As set forth in the instructions for filing the lobbying expenditure report (SS-8011), “compensation paid to any lobbyist who performs duties for the employer in addition to lobbying and related activities shall be apportioned to reflect the lobbyist’s time allocated for lobbying and related activities in this state.” There are no specific guidelines on the sorts of records needed to document the apportionment, but acceptable records include job descriptions, evaluations, time sheets, diaries, travel reimbursement documentation showing which days involved lobbying-related travel, or any other reasonable record.

### **Lobbying compensation reporting period**

Many lobbyists participating in the random audit did not understand they were being audited for the prior bi-annual disclosure period, which ran from October 2007 through March 2008. This problem is easily understood when one considers that it is Employers and not lobbyists who are required to submit the bi-annual lobbying expenditure reports.<sup>4</sup> It is the writer’s hope that more explicit information on the disclosure period will be included in the annual training and in instructions sent to employers and lobbyists regarding filing of the semi-annual lobbying expenditure report.

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<sup>4</sup> Tenn. Code Ann. § 3-6-303.